



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Merrie Lee Soules  
6760 Bright View Road  
Las Cruces, NM 88007

**MAY - 8 2018**

RE: MUR 7217

Dear Ms. Soules:

On March 8, 2017, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon review of the allegations contained in the complaint and information provided by you, the Commission, on April 24, 2018, found that there is reason to believe you violated 52 U.S.C. § 30114(c)(2) and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should make such a request in writing to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondents. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are

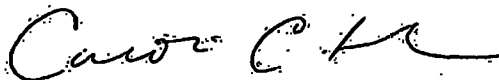
discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. For your information we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Ray Wolcott, the attorney assigned to this matter, at (202) 694-1302 or [rwolcott@fec.gov](mailto:rwolcott@fec.gov).

On behalf of the Commission,



Caroline C. Hunter  
Chair

Enclosures

Factual and Legal Analysis

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Merrie Lee Soules MUR 7217  
Soules for US Congress and Laura Garcia  
in her official capacity as treasurer

**I. INTRODUCTION**

The Complaint alleges that Aero Newton, Inc. ("Aero Newton") made, and Merrie Lee Soules, Soules for US Congress, and Laura Garcia in her official capacity as treasurer<sup>1</sup> ("the Committee") accepted, a prohibited in-kind corporate contribution in the form of non-commercial air travel in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.<sup>2</sup> Soules and the Committee implicitly acknowledge that she and her staff accepted travel on a non-commercial airplane, but they argue that any violation of the Act or Commission regulations was unintentional and any associated in-kind contribution was from the pilot, Brent E. Shelley, rather than a corporate entity.<sup>3</sup> Based on the available information, the Commission finds reason to believe that Soules and the Committee violated 52 U.S.C. § 30114(c)(2) and 11 C.F.R. §§ 100.93(c)(2) and 113.5(b).

**II. FACTS**

Soules was a House candidate in the Second Congressional District of New Mexico during the 2016 election cycle, and the Committee was her principal campaign committee.<sup>4</sup> The Complaint alleges that Soules and a Committee staffer used a non-commercial airplane owned

<sup>1</sup> Maryann Hendrickson was the Committee's treasurer at the time the complaint was filed. The Committee filed a revised Statement of Organization naming Garcia as treasurer on May 25, 2017.

<sup>2</sup> Compl. at 2-3 (Feb 17, 2017).

<sup>3</sup> Soules Resp. (May 18, 2017).

<sup>4</sup> Statement of Organization, Soules for US Congress (Feb. 1, 2016).

1 by Aero Newton to fly to several campaign events on Election Day, November 8, 2016.<sup>5</sup> The  
2 Complaint attaches photographs of Soules and others near a single-propeller-engine Cessna  
3 Model 182H ("airplane").<sup>6</sup>

4 Soules implicitly admits traveling on the non-commercial airplane, but argues that the  
5 travel should be classified as an in-kind contribution from Shelley, rather than a prohibited  
6 corporate contribution. She explains that Shelley was allocated flight time as a member of the  
7 Aero Flight Club of Las Cruces, Inc. ("Club"), a non-profit flight club incorporated in New  
8 Mexico.<sup>7</sup> Soules states that the Committee would report the corresponding in-kind contribution  
9 "on [their] next report," and she was taking steps to close the Committee's campaign account.<sup>8</sup>  
10 The Committee has not reported contributions or disbursements with regard to the airplane  
11 travel.

12 The information available to the Commission indicates that the airplane Soules and the  
13 Committee used is leased by the Club, which has exclusive use of the airplane. The available  
14 information also indicates that Shelley had access to the plane as a member of the Club and used  
15 the plane to fly Ms. Soules and her associates travel throughout the state. The Committee's  
16 disclosure reports do not show any contributions from Shelley, the Club, or Aero Newton, Inc.

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<sup>5</sup> Compl. at 1-3. The Complaint is unclear as to whether Soules traveled with one staff member or two. The Complaint identifies one other staff member by name, but the pictures attached to the Complaint show a total of four people, including the pilot Shelley.

<sup>6</sup> Compl. at 2, Attach. A; *see also* CESSNA 1965 182H SKYLANE - PLANE & PILOT MAGAZINE, <http://www.planeandpilotmag.com/article/cessna-1965-182h-skylane> (last visited Aug. 10, 2017).

<sup>7</sup> Soules Resp.

<sup>8</sup> *Id.*

1    **III.    LEGAL ANALYSIS**

2            The Honest Leadership and Open Government Act of 2007 (“HLOGA”) amended the  
3    Act to prohibit House candidates from making any expenditure for non-commercial air travel.<sup>9</sup>  
4    Commission regulations similarly prohibit House candidates from accepting in-kind  
5    contributions of non-commercial air travel.<sup>10</sup> The prohibition on House candidates’ non-  
6    commercial air travel applies to any “campaign traveler,” which includes “any candidate  
7    traveling in connection with an election for Federal office or any individual traveling in  
8    connection with an election for Federal office on behalf of a candidate or political committee.”<sup>11</sup>

9            During the 2016 election cycle, the Act prohibited any person from making a contribution  
10   to any candidate or the candidate’s authorized committee with respect to a federal election  
11   which, in the aggregate, exceeded \$2,700.<sup>12</sup> No candidate, officer, or employee of a political  
12   committee shall knowingly accept any contribution that exceeds the contribution limits.<sup>13</sup> In  
13   addition, corporations are prohibited from contributing to candidates’ authorized committees,  
14   and a candidate’s committee may not knowingly accept prohibited corporate contributions.<sup>14</sup>

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<sup>9</sup>        52 U.S.C. § 30114(c)(2) Two exceptions to the prohibition exist—travel on government-operated aircraft and travel on aircraft owned or leased by the candidate—but neither exception applies here. 52 U.S.C. § 30114(c)(2)(B), (3).

<sup>10</sup>        11 C.F.R. §§ 100.93(c)(2), 113.5(b). Commercial travel is defined as travel aboard “an aircraft operated by an air carrier or commercial operator certificated by the Federal Aviation Administration, provided that the flight is required to be conducted under FAA air carrier safety rules....” 11 C.F.R. § 100.93(a)(3)(iv)(A); *see also* 11 C.F.R. §§ 100.93(a)(3)(v) (defining “non-commercial travel” as travel that is not commercial travel)..

<sup>11</sup>        *Id.* § 100.93(a)(3)(i)(A).

<sup>12</sup>        52 U.S.C. § 30116(a)(1)(A). A contribution “includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.” *Id.* § 30101(8)(a)(i).

<sup>13</sup>        *Id.* § 30116(f).

<sup>14</sup>        52 U.S.C. § 30118(a); Advisory Op. 2010-11 (Commonsense Ten) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)); *Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011).

1 Soules implicitly admits that she and her staff were “campaign travelers” by  
2 acknowledging that they traveled by airplane to “reach as many people as possible on election  
3 day.”<sup>15</sup> Neither the Club nor Shelley are air carriers or commercial operators “certificated by the  
4 Federal Aviation Administration,” thus, the travel on the airplane was non-commercial travel.<sup>16</sup>  
5 Further, Soules’s argument that her Committee was permitted to accept flights from Shelley  
6 suggests that she does not understand that, subject to exceptions not applicable here, House  
7 candidates are prohibited from accepting non-commercial air travel from *any* source, individual  
8 or corporate.

9 The provision of such non-commercial travel is considered an in-kind contribution to the  
10 Committee from the “service provider,”<sup>17</sup> which Commission regulations define as either the  
11 owner, lessor, or other individual who obtains the legal right to use the aircraft.<sup>18</sup> The available  
12 information is insufficient to determine if the service provider of non-commercial travel to  
13 Soules and the Committee is the Club or Shelley, and consequently, whether the contribution is a  
14 prohibited corporate contribution from the Club or a potentially excessive contribution from  
15 Shelley.

16 Regardless of the identity of the contributor, the value of the resulting in-kind  
17 contribution is the “fair market value of the normal and usual charter fare or rental charge for a

<sup>15</sup> See Soules Resp. at 1; 11 C.F.R. §§ 100.93(a)(3)(i)(A), 100.93(a)(3)(ii).

<sup>16</sup> The Federal Aviation Administration’s Airline Certification Information database contains no record of a certification for “Aero Flight Club of Las Cruces, Inc.” or any similarly named entity. See FEDERAL AVIATION ADMINISTRATION AIRLINE CERTIFICATE INFORMATION, <http://av-info.faa.gov/OperatorsName.asp> (last visited Jul. 19, 2017).

<sup>17</sup> See 11 C.F.R. § 113.5(d).

<sup>18</sup> See 11 C.F.R. § 100.93(a)(3)(ii); see also MUR 6421 (Benishek).

1 comparable aircraft of comparable size.”<sup>19</sup> Although it is not clear where Soules and her staff  
2 flew with Shelley, the Complaint alleges that they flew to three locations and traveled  
3 approximately eight hours.<sup>20</sup> Based on this allegation and publicly available hourly rental rates  
4 for a similar plane, the fair market value of the flights is estimated to be between \$1,920 and  
5 \$3,000.<sup>21</sup>

6 Accordingly, the Commission finds reason to believe that Soules and the Committee  
7 violated 52 U.S.C. § 30114(c)(2), 11 C.F.R. § 100.93(c)(2), and 11 C.F.R. § 113.5(b) by  
8 accepting prohibited non-commercial travel.

<sup>19</sup> 52 U.S.C. § 30114(c)(1)(2); 11 C.F.R. § 100.93(c)(1); *see also* MUR 6421 (Benishek).

<sup>20</sup> Compl. at 2.